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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 5:15-CV-01779 (VEB)

MARYANN CABRERA  
CASTANEDA,

Plaintiff,

vs.

NANCY BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

**I. INTRODUCTION**

In April of 2010, Plaintiff Maryann Cabrera Castaneda applied for Disability Insurance benefits under the Social Security Act. The Commissioner of Social Security denied the application.<sup>1</sup>

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<sup>1</sup> On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

1 Plaintiff, by and through her attorney, William M. Kuntz, Esq. commenced  
2 this action seeking judicial review of the Commissioner's denial of benefits pursuant  
3 to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

4 The parties consented to the jurisdiction of a United States Magistrate Judge.  
5 (Docket No. 10, 11, 19, 22). On December 12, 2016, this case was referred to the  
6 undersigned pursuant to General Order 05-07. (Docket No. 18).

## 7 8 **II. BACKGROUND**

9 Plaintiff applied for Disability Insurance benefits on April 27, 2010, alleging  
10 disability beginning April 1, 2009. (T at 135).<sup>2</sup> The application was denied initially  
11 and on reconsideration. Plaintiff requested a hearing before an Administrative Law  
12 Judge ("ALJ").

13 On March 15, 2012, a hearing was held before ALJ Jesse J. Pease. (T at 22).  
14 Plaintiff appeared with her attorney and testified. (T at 26-40). The ALJ also  
15 received testimony from Corinne Porter, a vocational expert. (T at 40-47).

16 On March 27, 2012, ALJ Pease issued a written decision denying the  
17 application for benefits. (T at 7-20). The Appeals Council denied Plaintiff's request  
18 for review on February 14, 2013. (T at 1-7). Plaintiff commenced an action in

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19 <sup>2</sup> Citations to ("T") refer to the administrative record at Docket No. 14.

1 United States District Court for the Central District of California seeking review of  
2 the Commissioner's decision. On November 6, 2013, the Honorable Alka Sagar,  
3 United States Magistrate Judge, approved a Stipulation between the parties and  
4 remanded the case for further proceedings. (T at 392-98). The Appeals Council in  
5 turn remanded the matter to an ALJ. (T at 399-403).

6 A second administrative hearing was held on March 25, 2015, also before ALJ  
7 Pease. Plaintiff again appeared with her attorney and testified. (T at 315-320). The  
8 ALJ also received testimony from Robin Generaux, a vocational expert (T at 323-  
9 331, 336-337), and Roger Castaneda, Plaintiff's husband. (T at 320-322, 332-334).

10 ALJ Pease issued a second decision denying the application for benefits on  
11 May 5, 2015. (T at 291-309). This decision now represents the Commissioner's  
12 final decision.

13 On September 1, 2015, Plaintiff, acting by and through her counsel, filed this  
14 action seeking judicial review of the Commissioner's denial of benefits. (Docket No.  
15 1). The Commissioner interposed an Answer on January 4, 2016. (Docket No. 13).  
16 The parties filed a Joint Stipulation on April 12, 2016. (Docket No. 17).

17 After reviewing the pleadings, Joint Stipulation, and administrative record,  
18 this Court finds that the Commissioner's decision must be affirmed and this case be  
19 dismissed.

### III. DISCUSSION

#### A. Sequential Evaluation Process

The Social Security Act (“the Act”) defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant shall be determined to be under a disability only if any impairments are of such severity that he or she is not only unable to do previous work but cannot, considering his or her age, education and work experiences, engage in any other substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person is engaged in substantial gainful activities. If so, benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the decision maker proceeds to step two, which determines whether the claimant has a

1 medically severe impairment or combination of impairments. 20 C.F.R. §§  
2 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

3 If the claimant does not have a severe impairment or combination of  
4 impairments, the disability claim is denied. If the impairment is severe, the  
5 evaluation proceeds to the third step, which compares the claimant's impairment(s)  
6 with a number of listed impairments acknowledged by the Commissioner to be so  
7 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),  
8 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or  
9 equals one of the listed impairments, the claimant is conclusively presumed to be  
10 disabled. If the impairment is not one conclusively presumed to be disabling, the  
11 evaluation proceeds to the fourth step, which determines whether the impairment  
12 prevents the claimant from performing work which was performed in the past. If the  
13 claimant is able to perform previous work, he or she is deemed not disabled. 20  
14 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

15 At this step, the claimant's residual functional capacity (RFC) is considered. If  
16 the claimant cannot perform past relevant work, the fifth and final step in the process  
17 determines whether he or she is able to perform other work in the national economy  
18 in view of his or her residual functional capacity, age, education, and past work  
19

1 experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*,  
2 482 U.S. 137 (1987).

3 The initial burden of proof rests upon the claimant to establish a *prima facie*  
4 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup>  
5 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden  
6 is met once the claimant establishes that a mental or physical impairment prevents  
7 the performance of previous work. The burden then shifts, at step five, to the  
8 Commissioner to show that (1) plaintiff can perform other substantial gainful  
9 activity and (2) a “significant number of jobs exist in the national economy” that the  
10 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

## 11 **B. Standard of Review**

12 Congress has provided a limited scope of judicial review of a Commissioner’s  
13 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
14 made through an ALJ, when the determination is not based on legal error and is  
15 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
16 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999).

17 “The [Commissioner’s] determination that a plaintiff is not disabled will be  
18 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*  
19 *Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial

1 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119  
2 n 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d  
3 599, 601-02 (9<sup>th</sup> Cir. 1989). Substantial evidence “means such evidence as a  
4 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*  
5 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and  
6 conclusions as the [Commissioner] may reasonably draw from the evidence” will  
7 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review,  
8 the Court considers the record as a whole, not just the evidence supporting the  
9 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir.  
10 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

11 It is the role of the Commissioner, not this Court, to resolve conflicts in  
12 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
13 interpretation, the Court may not substitute its judgment for that of the  
14 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
15 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
16 set aside if the proper legal standards were not applied in weighing the evidence and  
17 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
18 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
19 administrative findings, or if there is conflicting evidence that will support a finding

1 of either disability or non-disability, the finding of the Commissioner is conclusive.  
2 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

3 **C. Commissioner's Decision**

4 The ALJ determined that Plaintiff had not engaged in substantial gainful  
5 activity since April 1, 2009, the alleged onset date, and met the insured status  
6 requirements of the Social Security Act through December 31, 2013 (the "date last  
7 insured"). (T at 296). The ALJ found that Plaintiff's hypertension (poor controlled),  
8 diabetes mellitus (poorly controlled), obesity, left cerebellar infarct (stroke) (2009),  
9 depressive disorder NOS, cognitive disorder NOS, and anemia were "severe"  
10 impairments under the Act. (Tr. 296).

11 However, the ALJ concluded that, as of the date last insured, Plaintiff did not  
12 have an impairment or combination of impairments that met or medically equaled  
13 one of the impairments set forth in the Listings. (T at 297).

14 The ALJ determined that Plaintiff retained the residual functional capacity  
15 ("RFC") to perform light work, as defined in 20 CFR § 404.1567 (b), with  
16 limitations as follows: she can lift, carry, push, or pull 20 pounds occasionally and  
17 10 pounds frequently; stand/walk for about 2 hours in an 8-hour workday; sit for a  
18 full 8-hour workday; perform occasional postural activities; no climbing or  
19 balancing; no ladders, ropes, or scaffolds; no hazardous machinery or unprotected



1 heights; no foot controls with the left foot; frequent use of hands bilaterally; no  
2 more than simple and routine tasks, work in a non-public environment, with no  
3 hypervigilance needed and no responsibility for others' safety; and only non-intense  
4 interaction with coworkers and supervisors. (T at 298).

5 The ALJ found that, as of the date last insured, Plaintiff could not perform her  
6 past relevant work as a certified nurse assistant or warehouse worker. (T at 302).  
7 Considering Plaintiff's age (46 years old on the date last insured), education (at least  
8 high school), work experience, and residual functional capacity, the ALJ found that,  
9 as of the date last insured, jobs existed in significant numbers in the national  
10 economy that Plaintiff could perform. (T at 303).

11 Accordingly, the ALJ determined that Plaintiff was not disabled within the  
12 meaning of the Social Security Act between April 1, 2009 (the alleged onset date)  
13 and December 31, 2013 (the date last insured) and was therefore not entitled to  
14 benefits. (T at 304).

15 **D. Disputed Issues**

16 As set forth in the Joint Stipulation (Docket No. 17, at p. 4-5), Plaintiff offers  
17 two (2) main arguments in support of her claim that the Commissioner's decision  
18 should be reversed. First, Plaintiff argues that the ALJ did not properly assess the  
19 medical evidence concerning her mental health impairments. Second, she

1 challenges the ALJ's credibility determination. This Court will address both  
2 arguments in turn.

#### 3 IV. ANALYSIS

##### 4 A. Medical Evidence

5 In disability proceedings, a treating physician's opinion carries more weight  
6 than an examining physician's opinion, and an examining physician's opinion is  
7 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,  
8 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
9 1995). If the treating or examining physician's opinions are not contradicted, they  
10 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If  
11 contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons  
12 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d  
13 1035, 1043 (9th Cir. 1995). Historically, the courts have recognized conflicting  
14 medical evidence, and/or the absence of regular medical treatment during the alleged  
15 period of disability, and/or the lack of medical support for doctors' reports based  
16 substantially on a claimant's subjective complaints of pain, as specific, legitimate  
17 reasons for disregarding a treating or examining physician's opinion. *Flaten v.*  
18 *Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

1 An ALJ satisfies the “substantial evidence” requirement by “setting out a  
2 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
3 his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995,  
4 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)).

5 In this case, Dr. Earbin Stanciell conducted a consultative psychiatric  
6 examination on November 13, 2014. Dr. Stanciell diagnosed depressive disorder  
7 NOS and cognitive disorder NOS. (T at 504). He assigned a Global Assessment of  
8 Functioning (“GAF”) score<sup>3</sup> of 45 (T at 505), which is indicative of serious  
9 impairment in social, occupational or school functioning. *Haly v. Astrue*, No. EDCV  
10 08-0672, 2009 U.S. Dist. LEXIS 76881, at \*12-13 (Cal. CD Aug. 27, 2009).

11 Dr. Stanciell assessed mild difficulty maintaining composure and an even  
12 temperament; mild difficulties in maintaining social functioning; moderate  
13 difficulties focusing and maintaining attention; and moderate difficulties in  
14 concentration, persistence, and pace. (T at 505). He described Plaintiff’s level of  
15 personal independence as “poor,” but found she was intellectually and  
16 psychologically capable of performing activities of daily living. (T at 505).

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18 <sup>3</sup> “A GAF score is a rough estimate of an individual's psychological, social, and occupational  
19 functioning used to reflect the individual's need for treatment.” *Vargas v. Lambert*, 159 F.3d 1161,  
20 1164 n.2 (9<sup>th</sup> Cir. 1998).

1 Dr. Stanciell opined that Plaintiff would have mild limitations with regard to  
2 performing simple and repetitive tasks and moderate limitations with respect to the  
3 performance of detailed and complex tasks. He assessed moderate difficulties as to  
4 Plaintiff's ability to perform work activities on a consistent basis without special or  
5 additional supervision and moderate limitations completing a normal workday or  
6 workweek. Dr. Stanciell found moderate limitations with regard to accepting  
7 instructions from supervisors and interacting with co-workers and the public and  
8 mild difficulties as to handling usual stresses, changes, and demands of gainful  
9 employment. (T at 505). He characterized Plaintiff's prognosis as "poor." (T at  
10 505).

11 Dr. Stanciell also completed a Medical Source Statement of Ability to Do  
12 Work-Related Activities (Mental) form, wherein he reported that Plaintiff's "poor  
13 concentration, memory, [and] slowed speech" would cause "significant problems  
14 communicating [and] cooperating with others." (T at 508).

15 The ALJ gave "some weight" to Dr. Stanciell's opinion (T at 302), but  
16 concluded that, as of the date last insured, Plaintiff retained the RFC to perform  
17 simple and routine tasks, in a non-public environment, with non-intense interaction  
18 with co-workers and supervisors, and provided the work did not require  
19 hypervigilance or responsibility for the safety of others. (T at 298).

1 For the following reasons, this Court finds the ALJ's assessment of the  
2 medical evidence, including Dr. Stanciell's opinion, is supported by substantial  
3 evidence.

4 In sum, the ALJ reasonably concluded that the contemporaneous treatment  
5 notes, which were generated prior to the date last insured, contradicted Dr.  
6 Stanciell's assessment, which was generated after that date. For example, while  
7 Plaintiff consistently expressed difficulties in managing her medications prior to the  
8 date last insured, she did not report cognitive dysfunction during her frequent visits  
9 with her primary care doctor, Dr. Carina Buhay, between April of 2009 and January  
10 of 2011. (T at 167-81, 182-91, 236-40). In March of 2011, Dr. Buhay referred  
11 Plaintiff to a psychologist based on complaints of "mood swings." (T at 271).

12 Dr. Syam Kunam, a psychologist, conducted an initial evaluation on April 22,  
13 2011. He noted generally mild psychiatric symptoms, including mild depressed  
14 mood, concentration issues, anxiety, and panic attacks. (T at 510). He assigned a  
15 GAF score of 65 (T at 512). "A GAF of 61-70 indicates '[s]ome mild symptoms  
16 (e.g., depressed mood and mild insomnia) or some difficulty in social, occupational,  
17 or school functioning (e.g., occasional truancy, or theft within the household), but  
18 generally functioning pretty well, [with] some meaningful interpersonal  
19 relationships.'" *Tagger v. Astrue*, 536 F. Supp. 2d 1170, 1174 n.8 (C.D. Cal. 2008).

1 Dr. Kunman prescribed medication and, in subsequent appointments, described the  
2 medication as “working” and noted that Plaintiff was “doing well.” (T at 512-22).

3 Although Dr. Buhay thereafter added a diagnosis of major depression to  
4 Plaintiff’s chart, the treatment notes from July of 2011 through March 2013 are  
5 largely devoid of psychological complaints and contain generally unremarkable  
6 mental status examinations. (T at 272, 274, 278, 280, 282, 286, 289, 550, 552, 555,  
7 564). A May 2013 treatment note indicated that Plaintiff’s memory was “poor” (T  
8 at 568), but the treatment notes from August 2013 through March of 2015 did not  
9 document complaints of serious psychological symptoms. (T at 575, 578, 584, 590,  
10 596, 600, 604, 608, 610, 613, 618, 619, 622).

11 In January of 2015, Dr. Buhay opined that Plaintiff had “no impairment of  
12 recent or remote memory and normal attention span and ability to concentrate.” (T at  
13 620). Although Dr. Buhay consistently assessed physical limitations he believed  
14 were disabling (in particular, balance and gait disturbance), he never opined that  
15 Plaintiff had disabling psychological or cognitive impairments. (T at 569, 573, 577,  
16 580, 586, 591, 598, 602, 606, 612, 615, 621).

17 In sum, the ALJ reasonably concluded that, based upon the contemporaneous  
18 record, the limitations assessed by Dr. Stanciell were not reflective of Plaintiff’s  
19 limitations prior to the date last insured. *See Bayliss v. Barnhart*, 427 F.3d 1211,

1 1216 (9<sup>th</sup> Cir. 2005)(finding that “discrepancy” between treatment notes and opinion  
2 was “a clear and convincing reason for not relying on the doctor's opinion  
3 regarding” the claimant’s limitations).

4 Plaintiff generally did not complain of significant psychiatric symptoms, and  
5 received limited mental health treatment, which – per the relevant records –  
6 appeared to be effective. *See Johnson v. Shalala*, 60 F.3d 1428,1434 (9th Cir.  
7 1995)(claimant’s receipt of conservative treatment is a specific and legitimate reason  
8 to reject an opinion the impairment is disabling).

9 It is certainly possible that Plaintiff’s condition worsened after the date last  
10 insured and that the limitations assessed by Dr. Stanciell were accurate as of the date  
11 of his assessment in November of 2014. However, the question before this Court is  
12 whether substantial evidence supports the ALJ’s assessment as of the date last  
13 insured. As set forth above, the ALJ’s conclusion in this regard is based on an  
14 extensively documented treatment history, which shows few psychological  
15 complaints and limited mental health treatment, which appears to have been  
16 effective. <sup>4</sup>

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17 <sup>4</sup> Plaintiff also takes issue with the ALJ’s step five finding that she could perform work as a mail  
18 clerk. The Commissioner concedes that this job would require reasoning skills inconsistent with  
19 Plaintiff’s RFC, as determined by the ALJ. However, Plaintiff raises no objection to the other two  
20 positions identified by the ALJ at step five (T at 303-304) – addresser and sorter. As such, the  
ALJ’s error in identifying the mail clerk position was harmless. *See Stout v. Comm’r, Soc. Sec.*

1 Plaintiff argues that the ALJ should have weighed the evidence differently and  
2 resolved the conflict in favor of Dr. Stanciell's opinion, finding that assessment  
3 more probative as to her level of functioning as of the date last insured. However, it  
4 is the role of the Commissioner, not this Court, to resolve conflicts in evidence.  
5 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Richardson*, 402 U.S. at  
6 400. If the evidence supports more than one rational interpretation, this Court may  
7 not substitute its judgment for that of the Commissioner. *Allen v. Heckler*, 749 F.2d  
8 577, 579 (9th 1984). If there is substantial evidence to support the administrative  
9 findings, or if there is conflicting evidence that will support a finding of either  
10 disability or nondisability, the Commissioner's finding is conclusive. *Sprague v.*  
11 *Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Here, the ALJ's decision was  
12 supported by substantial evidence and must therefore be sustained. *See Tackett v.*  
13 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999)(holding that if evidence reasonably  
14 supports the Commissioner's decision, the reviewing court must uphold the decision  
15 and may not substitute its own judgment).

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18 *Admin.*, 454 F.3d 1050, 1054-55 (9th Cir. 2006) (describing the harmless error test as whether "the  
19 ALJ's error did not materially impact his decision"); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880,  
20 885 (9th Cir.2006) (holding that an error is harmless if it was "inconsequential to the ultimate  
nondisability determination").



1 **B. Credibility**

2 A claimant's subjective complaints concerning his or her limitations are an  
3 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
4 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ's findings with regard to the  
5 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*  
6 *Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Absent affirmative evidence of  
7 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear  
8 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). "General  
9 findings are insufficient: rather the ALJ must identify what testimony is not credible  
10 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;  
11 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

12 However, subjective symptomatology by itself cannot be the basis for a  
13 finding of disability. A claimant must present medical evidence or findings that the  
14 existence of an underlying condition could reasonably be expected to produce the  
15 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.  
16 § 404.1529(b), 416.929; SSR 96-7p.

17 In this case, Plaintiff stated as follows: She fatigues easily, has unbalanced  
18 movements, feels depressed and agitated, and had unstable hand coordination. (T at  
19 158). She has trouble with concentration, has uncontrolled movements, and

1 experiences mood swings. (T at 161). She experiences headaches, shortness of  
2 breath, numbness, pain, and difficulty walking. (T at 27-29). Dizziness is an issue if  
3 she tries to stand still for more than 5 minutes. (T at 35). She can lift only about 2  
4 pounds. (T at 35). Hand problems make it difficult to write or use a computer. (T at  
5 36). Bladder control is an issue. (T at 37). She has difficulty with balance,  
6 controlling her feelings, and remembering her medications. (T at 38-39, 318-19).

7 The ALJ concluded that Plaintiff's medically determinable impairments could  
8 reasonably be expected to cause the alleged symptoms, but that her statements  
9 regarding the intensity, persistence, and limiting effects of the symptoms were not  
10 fully credible. (T at 299).

11 For the reasons that follow, this Court finds the ALJ's decision consistent with  
12 applicable law and supported by substantial evidence.

13 The ALJ reasonably concluded that Plaintiff's subjective complaints were not  
14 supported by the treatment record and objective evidence. The treatment notes  
15 indicate slight ataxic<sup>5</sup> gait but generally document normal motor strength with no  
16 noted need for an assistive device. Plaintiff was consistently advised to walk and  
17 exercise. (T at 167-91, 235-40, 266-90, 300-01, 550-622). Dr. Sandra Eriks

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18 <sup>5</sup> Ataxia is a lack of muscle coordination that may affect speech, eye movements, the ability to swallow, walking,  
19 picking up objects, and other voluntary movements.

1 performed a consultative examination in June of 2010. She opined that Plaintiff  
2 could lift/carry 50 pounds occasionally and 25 pounds frequently; stand/walk 6  
3 hours in an 8-hour workday; and sit 6 hours in an 8-hour workday. (T at 215). Dr.  
4 Eriks assessed no postural, manipulative, visual, communicative, or environmental  
5 limitations. (T at 215). Dr. Robert Moore performed a consultative neurological  
6 examination in December of 2010 and made findings generally consistent with the  
7 ALJ's RFC determination. (T at 246-47). The ALJ's findings were also supported  
8 by the assessment of Dr. J. Ross, a non-examining State Agency review consultant.  
9 (T at 250-56).

10 Although lack of supporting medical evidence cannot form the sole basis for  
11 discounting pain testimony, it is a factor the ALJ may consider when analyzing  
12 credibility. *Burch v. Barnhart*, 400 F.3d 676, 680 (9<sup>th</sup> Cir. 2005). In other words, an  
13 ALJ may properly discount subjective complaints where, as here, they are  
14 contradicted by medical records. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d  
15 1155, 1161 (9<sup>th</sup> Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9<sup>th</sup> Cir.  
16 2002).

17 Moreover, as outlined above, the treatment records with regard to Plaintiff's  
18 mental health impairments document few psychological complaints and limited  
19 mental health treatment, which appears to have been effective. "Evidence of

1 ‘conservative treatment’ is sufficient to discount a claimant’s testimony regarding  
2 the severity of an impairment.” *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007).

3 Lastly, Plaintiff complains that the ALJ did not adequately address the lay  
4 testimony provided by her husband. Although the ALJ noted Mr. Castaneda’s  
5 testimony (T at 294), he did not explain what weight he gave that testimony.  
6 Although this was error, the Ninth Circuit has held that an ALJ’s failure to address  
7 lay testimony may be harmless where, as here, (a) the ALJ validly rejected the  
8 subjective complaints of the claimant and (b) the claimant’s complaints were  
9 substantially the same as the lay testimony. *See Valentine v. Astrue*, 574 F.3d 685,  
10 694 (9<sup>th</sup> Cir. 2009); *Molina v. Astrue*, 674 F.3d 1104, 1114 (9<sup>th</sup> Cir. 2012).

11 Accordingly, this Court finds no reversible error as to this aspect of the ALJ’s  
12 decision. In sum, the ALJ validly discounted Plaintiff’s subjective complaints (as  
13 inconsistent with the treatment history and medical opinion) and the same reasons  
14 would constitute “germane” reasons for discounting the lay opinion testimony  
15 offered by Plaintiff’s husband. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d  
16 1050, 1054-55 (9th Cir. 2006) (describing the harmless error test as whether “the  
17 ALJ’s error did not materially impact his decision”); *Robbins v. Soc. Sec. Admin.*,  
18 466 F.3d 880, 885 (9th Cir.2006) (holding that an error is harmless if it was  
19 “inconsequential to the ultimate nondisability determination”).

**V. CONCLUSION**

After carefully reviewing the administrative record, this Court finds substantial evidence supports the Commissioner's decision, including the objective medical evidence and supported medical opinions. It is clear that the ALJ thoroughly examined the record, afforded appropriate weight to the medical evidence, including the assessments of the treating and examining medical providers and medical experts, and afforded the subjective claims of symptoms and limitations an appropriate weight when rendering a decision that Plaintiff is not disabled. This Court finds no reversible error and because substantial evidence supports the Commissioner's decision, the Commissioner is GRANTED summary judgment and that Plaintiff's motion for judgment summary judgment is DENIED.

**VI. ORDERS**

IT IS THEREFORE ORDERED that:

Judgment be entered AFFIRMING the Commissioner's decision and DISMISSING this action, and it is further ORDERED that

The Clerk of the Court file this Decision and Order and serve copies upon counsel for the parties.

DATED this 1<sup>st</sup> day of March, 2017,

/s/Victor E. Bianchini  
VICTOR E. BIANCHINI  
UNITED STATES MAGISTRATE JUDGE